IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.2.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

AND

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.Nos.10441 of 2003 and 49266 of 2006
& W.P.M.P.Nos.13207 0f 2003 in W.P.No.10441 of 2003
& M.P.No.2 of 2006 in W.P.No.49266 of 2006

C.Balasubramani .. Petitioner in W.P.No.10441 of 2003

Smt.Irene G.Chandra .. Petitioner in W.P.No.49266 of 2006

vs.

1. Union of India,,
   Rep. by Inspector of Post,
   Kuzhithurai Sub-Division,
   Kuzhithurai,
   Kanyakumari District-629 163.

2. The Registrar,
   Central Administrative Tribunal,
   Chennai. .. Respondents in W.P.No.10441 of 2003

1. The Union of India,
   rep. by the Senior Superintendent of Post Offices,
   Kanyakumari District, Kanyakumari.

2. The Inspector of Post,
   Kuzhithurai Sub-Division,
   Kanyakumari District.

3. The Central Administrative Tribunal,
   Chennai Bench, rep. by its Registrar,
   High Court Campus, Chennai.
   .. Respondents in W.P.No.49266 of 2006

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Writ Petition No.10441 of 2003 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to O.A.No.1143 of 2002 and R.A.No.6 of 2003 on the file of the Central Administrative Tribunal, Madras Bench and quash the orders dated 18.12.2002 and 29.1.2003 respectively, consequently direct the first respondent to reinstate the petitioner as GDS Mail Packer at Kanjampuram with all service benefits.

Writ Petition No.49266 of 2006 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the proceedings of the Central Administrative Tribunal, the third respondent herein O.A.No.938 of 2005, dated 18.10.2006 insofar as it upholds the proceedings of the second respondent in Memo No.PF/IC, dated 29.11.2005 and quash both the orders and consequently direct the respondents to reinstate the petitioner as GDS Packer, Kanjampuram, with all consequential and attendant benefits.

For petitioner in W.P.No.10441 of 2003 :
Mr.R.Malaichamy

For petitioner in W.P.No.49266 of 2006 :
Mr.V.Vijay Shankar

For respondent-1 in W.P.No.10441 of 2003 and
respondents 1 and 2 in W.P.No.49266 of 2006:
Mr.S.Udayakumar, SCGSC

For Respondent 2 - Tribunal in WP.10441/03

For Respondent 3 - Tribunal in WP.49266/06.

COMMON ORDER

(Order of the Court was made by F.M.Ibrahim Kalifulla,J.)

By consent of learned counsel for the parties, we dispose of these Writ Petitions by this common order.

2. The grievances of the petitioners in both these Writ Petitions relate to the post of Gramin Dak Sevak Mail Packer, Kanjampuram S.O.

3. In W.P.No.10441 of 2003, the petitioner seeks to challenge the orders of the Central Administrative Tribunal, dated 18.12.2002 and 29.1.2003 passed in O.A.No.1143 of 2002 and Review Application No.6 of 2003 in O.A.No.1143 of 2002. By the above referred to orders, the Tribunal rejected the petitioner's Original Application as well as the Review Application, wherein the said writ petitioner challenged the order

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of termination dated 10.12.2002 passed by the first respondent by invoking the proviso to Rule 8(2) of the Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules, 2001 (hereinafter called "the Rules"). Subsequent to the said order of termination, the first respondent in W.P.No.10441 of 2003 appointed the petitioner in W.P.No.49266 of 2006 to the said post, by an order of appointment dated 11.12.2002. The said appointment also came to be terminated by an order of termination dated 29.11.2005 again by invoking the very same Rule 8(2) of the Rules, which has resulted in the challenge before the Central Administrative Tribunal and the Tribunal, by its order dated 18.10.2006 in O.A.No.938 of 2005, declined to interfere with the order of termination. The Tribunal also directed the Postal Department to take steps immediately to fill up the vacancy by holding a regular selection within eight weeks from the date of receipt of a copy of the order. It is as against the said order dated 18.10.2006 passed in O.A.No.938 of 2005, the subsequent incumbent, namely the petitioner in W.P.No.49266 of 2006 has come forward with that Writ Petition.

4. On a perusal of the various material papers placed before us and after hearing the submissions of the respective counsel, we find that though the Postal Department appeared to have resorted to calling for applications prior to issuance of the order of appointment to the petitioner in W.P.No.10441 of 2003, but yet, while issuing the order of appointment, the Postal authorities have made it clear that though the post of Gramin Dak Sevak Mail Packer, Kanjampuram became vacant, it was not possible to make regular appointment to the said post immediately and therefore decided to make provisional appointment of the said petitioner. The order of termination issued to the petitioner in W.P.No.10441 of 2003, dated 10.12.2002 was innocuous in nature and it merely referred to Rule 8(2) of the Rules, which provided for termination of such employment within a period of three years. Closely followed by that, on 11.12.2002, the petitioner in W.P.No.49266 of 2006 came to be appointed. The said order of appointment also made it clear that since the petitioner in W.P.No.10441 of 2003 came to be terminated, the need had arisen to engage a person to look after the work of GDS Mail Packer, Kanjampuram S.O. and therefore, a decision was taken to make a provisional appointment to the said post. It also made it clear that if ever it was decided to take the petitioner in W.P.No.10441 of 2003 back into service, the provisional appointment of the petitioner in W.P.No.49266 of 2006 will be terminated without notice. However, by order dated 20.5.2003, the Inspector of Posts stated that the appointment of the petitioner in W.P.No.49266 of 2006 took effect from 11.12.2002 forenoon and that such an appointment was to be in the nature of a contract liable to be terminated by either parties by notifying in writing and that her conduct and service shall be governed by the Rules as amended from time to time.

5. On a conspectus consideration of the above referred to orders as well as the so-called list prepared prior to the issuance of the provisional order of appointment, dated 8.4.2002 in respect of the

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petitioner in W.P.No.10441 of 2003, we are able to discern that neither the appointment of the petitioner in W.P.No.10441 of 2003, nor the appointment of the petitioner in W.P.No.49266 of 2006, was on a regular basis. Neither the order dated 8.4.2002 in respect of the petitioner in W.P.No.10441 of 2003, nor the order dated 11.12.2002 or the one dated 20.5.2003 issued in favour of the petitioner in W.P.No.49266 of 2006, created any legal right in favour of either of the petitioners to claim that their appointment was on regular basis. In the said circumstances, we are convinced that the invocation of Rule 8(2) of the Rules by the Postal Department in terminating the services of the petitioners in both these Writ Petitions, cannot be found fault with.

6. Though learned counsel for the petitioner in W.P.No.10441 of 2003 sought to make heavy reliance upon the decision of the Supreme Court reported in 1996 (1) S.C.C. 441 (Union of India vs. Jayakumar Parida) in order to state that the stand of the Postal authorities in their counter affidavit filed in this Court, reveals their inner agenda in resorting to the termination of the said petitioner, namely that he allegedly produced a false Nativity Certificate, we are unable to apply the said decision to the facts of this case. In fact, in the said decision itself, the Supreme Court made it clear that each case requires to be examined on its own facts.

7. In the light of our conclusion that the appointment of the petitioners in both these Writ Petitions was not on a regular basis, we are unable to apply the ratio of the said decision to the facts of the case and we hold that this case being clearly distinguishable, the petitioner in W.P.No.10441 of 2003 cannot seek for any relief based on the said decision of the Supreme court.

8. On the other hand, a Division Bench decision of this Court relied on by learned Standing Counsel for the Postal Department, reported in 2007 Writ L.R. 1 (S.Vidyashankar vs. Union of India and two others) applies in all fours to the facts of the case.

9. In any event, having regard to our conclusion that the appointment of both the petitioners itself was not on a regular basis and it was purely by way of a stop-gap arrangement, we fully support the conclusion of the Tribunal in its order dated 18.10.2006 passed in O.A.No.938 of 2005, in directing the Postal authorities to go in for regular selection to avoid any further controversy relating to the appointment to the post.

10. In order to rule out the apprehension of the petitioner in W.P.No.10441 of 2003 that if future regular selection be made, any adverse allegation referred to by the Postal authorities in their counter affidavit, should not cause any hindrance, we make it clear that in the event of the regular selection to be made by the Postal authorities pursuant to this order, the petitioner in W.P.No.10441 of 2003 should be permitted to stake his claims independently and unaffected by whatever

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reason stated by the Postal authorities in their counter affidavit filed in W.P.No.10441 of 2003. The petitioner in W.P.No.10441 of 2003 should however satisfy whatever pre-conditions that are required to be satisfied as per the Rules which prevail as on the date, when any regular selection is to be resorted to by the Postal authorities.

11. In the light of our above conclusions, we hold that the order of termination which has been found justified by the Tribunal in its order dated 18.10.2006 passed in O.A.No.938 of 2005, which is under challenge in W.P.No.49266 of 2006 and the order of termination which was confirmed by the Tribunal in its order dated 18.12.2002 passed in O.A.No.1143 of 2002 and the subsequent order dated 29.1.2003 passed in Review Application No.6 of 2003 in O.A.No.1143 of 2002, which are under challenge in W.P.No.10441 of 2003, cannot be interfered with.

12. Learned Standing Counsel for the Postal Department has also stated that having regard to the pendency of these Writ petitions, the Department has not made any temporary appointment to the said post till this date. Therefore, it has become imperative for the Postal Department to fill up the said post expeditiously.

13. Therefore, while dismissing both these Writ Petitions, we direct the Postal Department to fill up the post on a regular basis expeditiously, preferably within 90 days from the date of receipt of a copy of this order. No costs. The Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs

To
1. The Inspector of Post,
   Union of India,,
   Kuzhithurai Sub-Division,
   Kuzhithurai,
   Kanyakumari District-629 163.

2. The Registrar,
   Central Administrative Tribunal,
   High Court Campus, Chennai.

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3. The Senior Superintendent of Post Offices,
   Union of India,
   Kanyakumari District, Kanyakumari.

+ 2 CCs to Mr.S.Udayakumar, SCGSC, Advocate SR NO 6899, 6898

+ 1 CC To Mr. R.Malaichamy, Advocate SR NO. 6706

+ 1 CC To Mr. V.Vijayshankar, Advocate SR NO.7144

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